

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on January 23, 2001 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 250, 1/19/2001
Executive Action: SB 234; SB 56

HEARING ON SB 250

Sponsor: SENATOR KEN TOOLE, SD 27, Helena

Proponents: Matthew Leow, Montana Public Interest Research Group
Patrick Judge, Montana Environmental Information Center

**Gene Fenderson, Montana Joint Heavy & Highway
Committee**

**Alec Hansen, Montana League of Cities & Towns
Verner Bertelsen, Montana Senior Citizens Assn.**

**Opponents: John Alke, Montana Dakota Utilities
Mike Manion, Montana Power Company
Don Hendrickson, International Brotherhood of
Electrical Workers, Union 44**

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1}

SENATOR KEN TOOLE, SD 27, Helena stated that the idea for SB 250 came from his involvement with the city of Helena to put together bids on the purchase of generation resources when Montana Power Company (MPC) announced their intentions to sell the system. It was concluded that this was not a do-able scenario for the city. When MPC announced the sale of it's distribution system, there was a similar interest from other Montana cities, but in order to participate the cities formed a group called MEGA and agreed to enter a confidential bidding process for the entire system. That put the cities in a difficult position. In discussions as a member of the public, representatives of the cities were contacted and asked two questions. First, what was the price they were going to pay. The concern was that if the cities paid too much and paid well over-book, how would the money be recovered? Second, what was going to happen to the Mill Town Dam. Since the cities had entered into this agreement with MPC to keep their dealings confidential, that information was not available. When the cities were asked why they weren't using power of purchasing through condemnation, they said that it wasn't clear that they could prevail in that situation. There is no guarantee that these assets won't begin to change hands repeatedly and rates could go up dramatically for a variety of reasons. The mechanisms for the public and public entities in Montana to deal with those types of situations appear to be greatly constrained. This bill tries to clarify governmental entities' ability to exercise purchasing power.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 5.5}

Matthew Leow, Montana Public Interest Research Group, said that the problem with deregulation is that Montanans are at the mercy of out-of-state corporate interests. This bill will address that problem. With more power produced in this state than what is

needed, we should stop thinking of solutions to deregulation in terms of increasing power production. This bill outlines what qualifies the energy system as good. It should benefit the local economy, public health, and safety, provide quality service, and should have beneficial impacts on the environment.

Patrick Judge, Montana Environmental Information Center, urged the committee to support SB 250. Forfeiting our historic system to the benefit of lucrative out-of-state markets and creating a duplicate power supply system to serve Montanans is inefficient, costly, and environmentally unwarranted. Instead, ways should be sought to recapture the benefits of the existing system and this bill does just that. His group considers public power as a key element in any effective strategy to lead Montana out of the current energy crisis and to fully protect consumers in a natural environment.

Gene Fenderson, Montana Joint Heavy & Highway Committee, voiced his support of SB 250. They believe government entities should keep the right of eminent domain over facilities.

Alec Hansen, Montana League of Cities & Towns, said SB 250 could be part of the solution to Montana's energy problems. This is because cities and towns in western Montana are qualified for BPA preference power, which may be available at lower rates than anywhere else. To qualify, poles and wires must be owned as a requirement. This bill may be the only way to tap into the BPA system for preference power, if needed. In the northwest, there are numerous public power authorities and municipal utilities that provide electricity and natural gas.

Verner Bertelsen, Montana Senior Citizens Assn., stated senior citizens' concerns about rising power costs. They will support anything that will provide an opportunity to put power developed in Montana in the citizen's possession.

Opponents' Testimony:

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John Alke, Montana Dakota Utilities, said it is important for the committee to understand that SB 250 goes far beyond what the sponsor originally suggested. This bill would authorize an extraordinarily broad range of condemnations of public utilities. To understand how broad, the definition of government entities needs to be clarified. This bill does not purport to give the cities and towns condemnation authority. It purports to give every "governmental entity in the state condemnation authority." A governmental entity is defined in section 2-9-102 of Montana

law as "means and includes the state and political subdivision." In subsection 7 of the same statute, a state is defined as "the state of Montana, any office, department, agency, authority, commission, or institution, hospital, college, university, or instrumentality thereof." A political subdivision can be defined as "any county, city, municipal corporation, school district, special improvement district, tax district, or other political subdivision or public corporations." This bill will not do what the proponents suggested. They want the bill to solve the problem of the Montana power system. The proponents said we need to be able to acquire the power to get low rates. However, the bill would not authorize that to condemn low power. Low power is no longer regulated once going through a deregulation regime. The bill would simply allow condemnation of poles, wires, and pipes that the utilities have. The effect would actually be an increase in rates to customers. This happens in condemnation because the condemner will not acquire the system at the utility's cost, but rather a multiple of cost. Condemnation is at fair market value, not at original cost appreciated. Rates would increase for the entities which try to exercise the powers under this bill. In eastern Montana, this bill would have a substantial adverse impact on the property tax base. Montana Dakota Utilities (MDU) pays \$3.3 million in property tax in eastern Montana and if condemned, that part of the state would lose that money. MDU also pays \$500,000 in corporate license taxes and if condemned, the general fund for the state would lose that money as well. This bill also goes farther than simply authorizing these entities to condemn public utility property. It dramatically changes the standard in Montana law for such a condemnation. He urged for a "do not pass" recommendation.

Mike Manion, Montana Power Company, submitted written testimony, **EXHIBIT**(ens18a01).

Don Hendrickson, International Brotherhood of Electrical Workers, Union 44, stated his group believed this bill would have an adverse effect on employees and system reliability. Currently, if there is an emergency with MPC or the rural co-ops, they can take from resources across the state and work collectively to get the power on and gas flowing. There are concerns that this may not be the case in the future if this bill is passed. He submitted written testimony from **Stan Dupree, EXHIBIT**(ens18a02).

Questions from Committee Members and Responses:

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SENATOR COREY STAPLETON asked for justification of the crossing-over from the government to the private sector. **SENATOR TOOLE**

replied that this system was built using condemnation authority. There is nothing unusual about the power to take land for public uses. When dealing with an essential commodity, such as electricity, there is a public interest in making sure it's available, affordable, reliable, and appropriate. This bill doesn't direct that the government take the utility now, but simply clarifies that it's an ability that governmental entities would have. **SENATOR STAPLETON** wondered why this bill was needed if government condemnation already exists. **SENATOR TOOLE** answered that recent examples have been seen of government entities being very hesitant to use this authority because they felt they couldn't prevail. There is a public interest and concern for this particular action, these facilities and their operation.

SENATOR MIKE HALLIGAN asked if the bill was meant to be drafted so broadly. **SENATOR TOOLE** elaborated that he intended for the bill to apply to generation, as well as transmission and distribution facilities. His intent was to allow governmental entities to be able to deal with situations where the public benefit or uses weren't being met or were being abused.

SENATOR DON RYAN asked when an investor-owned utility buys a property, if the initial investment to buy the dam or poles and wires, the profit, and however much is spent on taxes all go towards the rate base. **Mike Manion** stated he was essentially correct. When a utility wishes to build a dam or purchase facilities, funds must be raised by selling stock to private investors or offering debt to customers. The debt gets priority over the stock. Once the money is secured from the private investor, it is then used to purchase the facility. If it is a capital investment, that goes into the rate base. For example, for a dam worth \$1 billion, that amount would go into the rate base and then depreciate over time. The rate base is really an original cost minus depreciation. The profit is also determined by the Public Service Commission (PSC) and is made up of the return on equity and the debt interest. That percentage is then multiplied by the rate base to determine the authorized rate of return. The utility is given the opportunity to earn that rate of return. In addition to that equation, there are property taxes, depreciation, and other expenses which goes into the rate calculation.

SENATOR STEVE DOHERTY wondered who really pays the taxes that go into the rate base. **Mr. Manion** clarified that the taxes do not go into the rate base, but rather are an expense. They are on the other side of the equation as there are expenses plus the increase. Property taxes are included in rates, however.

SENATOR DOHERTY asked for the surrounding states that allow the formation of public utility districts giving those types of entities the right of eminent domain. **SENATOR TOOLE** declared that he wasn't sure of the states, but certainly public utility districts are common throughout the northwest having those powers. **SENATOR DOHERTY** questioned why a city government would use the power of eminent domain if the use of that power would cause an increase in rates as stated by **John Alke**. **SENATOR TOOLE** replied that he doubted they would. **SENATOR DOHERTY** asked why an entity would use the power of eminent domain to provide power to citizens if there were going to be problems with reliability or safety and whether there would be a hearing process of some sort that the cities would have to go through. **SENATOR TOOLE** assumed that there would be a process the city would have to go through. The bill lays out some criteria to be evaluated as well.

SENATOR TOM ZOOK questioned that if a bill like this was a statute on the books and allowed this to happen, whether this would have a chilling effect on anything in building a utility or if the bill was changed to include generation plants. **SENATOR TOOLE** replied that one of the more troubling parts of the opponent testimony was the idea of sending a troubling message out with this bill. He was more concerned with a far more disturbing message on the horizon with the current system and an expected rate increase in 2002.

SENATOR HALLIGAN wondered about the potential of local governments to use the authority to buy pieces of what is usually an integrated system and how that could affect the reliability and safety, etc. **SENATOR TOOLE** declared that the system was desegregated in 1997, which was a fundamental restructuring of how the system works. Those arrangements are commonplace throughout the country where there are municipal utilities running gas electric systems integrating with a larger grid system that is owned, monitored, or regulated by someone else. For a local example, Montana co-ops are geographically confined distribution systems which are part of a larger grid.

SENATOR HALLIGAN asked **Mr. Alke** to respond to the same question. **Mr. Alke** noted that if a city or town controls utilities, they can force annexation for any development outside the city limit. If a city is trying to grow and expand its property tax base, it has to go through a difficult process of annexation to bring in the areas outside the city in the property tax base. If a town owns the utility system, the town can make conditions which have to be followed. Ownership of the utility systems has a value to a municipality of greater breadth than simply the energy being paid for by the customer. **SENATOR HALLIGAN** asked about the issue with respect to a proponent of the integrated system. **Mr. Alke**

proclaimed that he agreed with **SENATOR TOOLE** to a degree, in that generation has been split from distribution and why not split it more. However, as **Mr. Manion** said, under this bill there are many small towns and there are a host of entities which could condemn each of those small towns. Those entities do not have the expertise or the financial strength to realistically run a utility system. If the minute pieced parts are allowed to be taken by individual government entities there will be a serious reliability problem.

SENATOR STAPLETON wondered how many municipally owned systems had been publicly owned or actually condemned from the private sector. **SENATOR TOOLE** stated that he was aware of at least two in the northwest that were privately run systems and then purchased by public entities. One of those included Emerald County Public Utility District.

Closing by Sponsor:

SENATOR TOOLE closed by addressing over-subscription on the Bonneville system. Over-subscription is in all classes and if a municipal or public utility is formed, they will be a preference customer. Furthermore, it is simply not true that government entities can't run utilities. In the midst of the California crisis, the utility sailing through without any problems and making money is the city of Los Angeles, which is a municipally owned and operated utility system that had the foresight not to stumble into deregulation.

{Tape : 2; Side : A; Approx. Time Counter : 1}

EXECUTIVE ACTION ON SB 234

Motion/Vote: **SENATOR HALLIGAN** moved that **SB 234 DO PASS**. Motion carried 9-0. **SENATOR MACK COLE** and **SENATOR MIKE TAYLOR** were excused.

EXECUTIVE ACTION ON SB 56

Motion/Vote: **SENATOR WALT MCNUTT** moved that **SB 56 BE RECONSIDERED**. Motion carried 9-0. **SENATOR COLE** and **SENATOR TAYLOR** were excused.

Motion: **SENATOR MCNUTT** moved that Amendment SB005604.ate, **EXHIBIT**(ens18a03), for **SB 56 DO PASS**.

Discussion:

SENATOR MCNUTT stated that the amendments put large customers in the same situation as the co-ops to be able to deduct their amortized and non-amortized expenses. The amortized and non-amortized costs are in their rates already and it would only be fair to put those amendments back into the bill.

SENATOR DOHERTY inferred that other people besides the co-ops were going to be affected by this bill and that another hearing should be held.

SENATOR HALLIGAN agreed with **SENATOR DOHERTY** about holding another hearing to get comments from large customers and wanted to know if the large customers had been disallowed their deductions, specifically by the Department of Revenue (DOR), like the co-ops had.

SENATOR MCNUTT preferred not to have another hearing, but agreed that there was no input from large customers and wanted to have a representative from Columbia Falls Aluminum to answer committee questions.

SENATOR ROYAL JOHNSON stated he didn't think that was appropriate unless there was another hearing so everyone affected could testify and offer any amendments.

SENATOR ALVIN ELLIS wondered if large customers were treated in the same manner as the co-ops were treated, by current legislation. **Todd Everts** replied that the large customers have a part of the Universal Systems Benefits statute that outlines their requirements for credits specifically unto themselves. As it relates to this issue, they have the same language that they must receive credits for those portions of expenditures for the purchase of power for retail and wholesale that are in support for renewable energy. The two provisions that are at issue are identical. The DOR made a ruling that amortized and non-amortized expenditures would not be allowed in the future after 1999 and that applied to co-ops, public utilities, and large customers.

SENATOR ELLIS exclaimed that no further hearing was necessary. Under current law, large customers were handled in the same method as the co-ops. The co-ops proved at the beginning of the hearing that their understanding was that amortized costs would be covered, not only for any expenditures that happened henceforth, but also for previous expenditures. **SENATOR STAPLETON** concurred with **SENATOR ELLIS**.

Stan Kaleczyc, Columbia Falls Aluminum, stated that DOR regulation applies to everyone, not just the co-ops.

SENATOR JOHNSON asked if any large customers had the same question presented to them as the co-ops did, which was the disallowance of the situation in the DOR. **Mr. Kaleczyc** proclaimed yes, they had. **SENATOR JOHNSON** inquired if **Mr. Kaleczyc** had testified at the hearing for SB 56. **Mr. Kaleczyc** answered no, he did not. He thought the co-op section cross-referenced section seven, dealing with large customers and that the issue was addressed in both sections. It was afterwards that he noticed that the drafting was inconsistent.

SENATOR HALLIGAN wanted elaboration on the bottom of page one of the bill, which was the co-op section, although it referred to large customers, and referred to subsection seven. He wanted to know why that internal reference to the section didn't cover what **SENATOR MCNUTT** was trying to do. **Mr. Everts** responded that an argument could be made that was the case. However, from a bill drafting and clarity perspective, to be absolutely certain that DOR would incorporate those types of expenditures, it was his legal advice to clarify that was the case through this amendment.

SENATOR DOHERTY wanted to know how many, how much, where, what Universal Systems Benefits (USB) they used, and the impact that would have on future USB, in terms of large customers.

SENATOR JOHNSON asked **Mr. Kaleczyc** and any other large customer representatives to prepare that information for the committee before the next hearing. He felt there wasn't enough information to take action on the amendments at that time.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens18aad)